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| | | 12/29/2009) |
| 12/29/2009 | <u>3</u> | This case has been assigned to the Honorable Susan R. Bolton. All future pleadings or documents should bear the correct case number: CV 09-02699-PHX-SRB. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/29/2009) |
| 12/29/2009 | <u>4</u> | Notice of availability of Magistrate Judge (BAS) (Entered: 12/29/2009) |
| 12/29/2009 | <u>5</u> | Summons Issued as to In & Out Garage Floors, LLC, PremierGarage Systems, LLC, Schorr Technologies, LLC. (Attachments: # <u>1</u> Schorr Technologies, # <u>2</u> In and Out Garage Floors)(BAS). *** IMPORTANT: You must select "Document and stamps" or "Document and comments" on the print screen in order for the court seal to appear on the summons you print. (Entered: 12/29/2009) |

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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF ARIZONA

12 FREDa, INC.; RICHARD E. ASHER, d/b/a
13 DUALCURE TECHNOLOGY, LLC;
14 INDMAR COATINGS CORP.; and HP
SPARTACOTE, LLC,

15 Plaintiffs,

16 vs.

17 PREMIERGARAGE SYSTEMS, LLC;
18 SCHORR TECHNOLOGIES, LLC; and IN &
OUT GARAGE FLOORS, LLC,

19 Defendants.

**COMPLAINT FOR
PATENT INFRINGEMENT
DEMAND FOR JURY TRIAL**

20
21 Plaintiffs Freda, Inc. ("Freda"), Richard E. Asher, d/b/a DualCure Technology,
22 LLC ("Asher"), Indmar Coatings Corp. ("Indmar"), and HP Spartacote, LLC
23 ("Spartacote") (collectively "the Plaintiffs") bring this action against the Defendants
24 PremierGarage Systems, LLC ("Premier"), Schorr Technologies, LLC ("Schorr-Tech"),
25 and In & Out Garage Floors, LLC ("In & Out") (collectively "the Defendants") and for
26 their cause of action allege:

PARTIES

1
2 1. Freda, Inc. is a corporation organized and existing under the laws of the
3 State of Indiana, with its principal place of business at 401 Growth Parkway, Angola, IN
4 46703.

5 2. Richard E. Asher is an individual with a residence at 3710 Waverly Place,
6 Lewis Center, OH 43035 and is doing business as DualCure Technology, LLC.

7 3. Indmar Coatings Corp. is a corporation organized and existing under the
8 laws of the State of Virginia and having a principal place of business at 317 West Main
9 Street, Wakefield, VA 23888.

10 4. HP Spartacote, LLC is a corporation organized and existing under the laws
11 of the state of Colorado with a principal place of business at 810 Brickyard Circle, Unit 1,
12 Golden, Colorado 80403.

13 5. Upon information and belief, Premier is a corporation organized and
14 existing under the laws of the State of Arizona with a principal place of business in this
15 judicial district at 1616 W. Williams Drive, Phoenix, AZ 85027.

16 6. Upon information and belief, Schorr-Tech is a corporation organized and
17 existing under the laws of the State of Arizona with a principal place of business in this
18 judicial district at 3660 E Wier Avenue, Phoenix, AZ 85040.

19 7. Upon information and belief, In & Out Garage Floors, LLC is a corporation
20 organized and existing under the laws of the State of Arizona with a principal place of
21 business in this judicial district at 302 S. 30th Street, Phoenix, AZ 85034

JURISDICTION AND VENUE

22
23 8. This action arises under the patent laws of the United States, Title 35
24 United States Code, particularly §§ 271 and 281 and Title 28 United States Code,
25 particularly §1338(a). Venue is proper in this Court under Title 28 United States Code §§
26 1391(b) and (c) and 1400(b).

BACKGROUND

9. Richard E. Asher is the named inventor of U.S. Patent No. 6,833,424 ("the '424 Patent"), titled "Dual Cure Polyurea Coating Composition," issued December 21, 2004 and of U.S. Patent No. 7,169,876 ("the '876 Patent", also titled "Dual Cure Polyurea Coating Composition," issued January 30, 2007 (collectively referred to as "the Asserted Patents"). The '424 Patent is attached hereto as Exhibit A. The '876 Patent is attached hereto as Exhibit B.

10. Half of Mr. Asher's interest in both the '424 Patent and the '876 Patent has been assigned to Plaintiff, Freda.

11. Freda has provided an exclusive license to Plaintiffs Indmar and HP Spartacote for use of the Asserted Patents in non-commercial garage floor coatings.

CLAIM FOR PATENT INFRINGEMENT

12. The Asserted Patents relate generally to non-aqueous polyurea coatings comprised of a polyaspartic ester and a polyisocyanate. The claimed coatings provide improved adhesion and film properties with fast cure times.

13. Upon information and belief, Premier sells or has sold products, including specifically the Premier Garage A Topcoat and Base and Premier Garage B Topcoat and Base, which embody at least one claim of the Asserted Patents. By manufacturing and selling such products, Premier has in the past and continues to infringe directly, by inducement, or by contributing to the infringement of the Asserted Patents, including but not limited to claims 11 and 16 of the '424 Patent and claim 1 of the '876 Patent.

14. As a result of Premier's infringing conduct, Premier has damaged the Plaintiffs. Premier is therefore liable to Plaintiffs in an amount that adequately compensates them for its infringement, which by law shall in no event be less than a reasonable royalty.

1 15. Premier has known about the Asserted Patents and Plaintiff's interest in
2 such since as early as March 26, 2008. Premier's continued infringement of the Asserted
3 Patents is therefore willful.

4 16. Upon information and belief, Schorr-Tech manufactures and sells products,
5 including the infringing products sold by Premier, which embody at least one claim of the
6 Asserted Patents. By manufacturing and selling such products, Schorr-Tech has in the
7 past and continues to infringe directly, by inducement, or by contributing to the
8 infringement of the Asserted Patents, including but not limited to claims 11 and 16 of the
9 '424 Patent and claim 1 of the '876 Patent.

10 17. As a result of Schorr-Tech's infringing conduct, Schorr-Tech has damaged
11 Plaintiffs. Schorr-Tech is therefore liable to Plaintiffs in an amount that adequately
12 compensates them for its infringement, which by law shall in no event be less than a
13 reasonable royalty.

14 18. Schorr-Tech has known about the Asserted Patents and Plaintiff's interest
15 in such since as early as March 26, 2008. Schorr-Tech's continued infringement of the
16 Asserted Patents is therefore willful.

17 19. Upon information and belief, In & Out sells products, including the
18 infringing products sold by Premier, which embody at least one claim of the Asserted
19 Patents. By selling such products, In & Out has in the past and continues to infringe
20 directly, by inducement, or by contributing to the infringement of the Asserted Patents,
21 including but not limited to claims 11 and 16 of the '424 Patent and claim 1 of the '876
22 Patent.

23 20. As a result of In & Out's infringing conduct, In & Out has damaged
24 Plaintiffs. In & Out is therefore liable to Plaintiffs in an amount that adequately
25 compensates them for its infringement, which by law shall in no event be less than a
26 reasonable royalty.

1 21. In & Out has known about the Asserted Patents and Plaintiff's interest in
2 such since as early as March 26, 2008. In & Out's continued infringement of the
3 Asserted Patents is therefore willful.

4 **DEMAND FOR JURY TRIAL**

5 22. Plaintiffs demand a jury trial on all claims and issues.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for entry of judgment:

8 A. that U.S. Patent No. 6,833,424 has been infringed by Premier and by others
9 whose infringement has been contributed to and/or induced by Premier;

10 B. that U.S. Patent No. 7,169,876 has been infringed by Premier and by others
11 whose infringement has been contributed to and/or induced by Premier;

12 C. that Premier account for and pay to Plaintiffs all damages and costs caused
13 by Premier's infringement of U.S. Patent Nos. 6,833,424 and 7,169,876;

14 D. that Plaintiffs be granted pre-judgment and post-judgment interest on the
15 damages caused by reason of Premier's infringement;

16 E. that Premier's infringement be found willful and that Plaintiffs' damages be
17 increased by three times the amount found or assessed pursuant to 35 U.S.C. § 284;

18 F. that U.S. Patent No. 6,833,424 has been infringed by Schorr-Tech and by
19 others whose infringement has been contributed to and/or induced by Schorr-Tech;

20 G. that U.S. Patent No. 7,169,876 has been infringed by Schorr-Tech and by
21 others whose infringement has been contributed to and/or induced by Schorr-Tech;

22 H. that Schorr-Tech account for and pay to Plaintiffs all damages and costs
23 caused by Schorr-Tech's infringement of U.S. Patent Nos. 6,833,424 and 7,169,876;

24 I. that Plaintiffs be granted pre-judgment and post-judgment interest on the
25 damages caused by reason of Schorr-Tech's infringement;
26

1 J. that Schorr-Tech's infringement be found willful and that Plaintiffs'
2 damages be increased by three times the amount found or assessed pursuant to 35 U.S.C.
3 § 284;

4 K. that U.S. Patent No. 6,833,424 has been infringed by In & Out and by
5 others whose infringement has been contributed to and/or induced by In & Out;

6 L. that U.S. Patent No. 7,169,876 has been infringed by In & Out and by
7 others whose infringement has been contributed to and/or induced by In & Out;

8 M. that In & Out account for and pay to Plaintiffs all damages and costs caused
9 by In & Out's infringement of U.S. Patent Nos. 6,833,424 and 7,169,876;

10 N. that Plaintiffs be granted pre-judgment and post-judgment interest on the
11 damages caused by reason of In & Out's infringement;

12 O. that In & Out's infringement be found willful and that Plaintiffs' damages
13 be increased by three times the amount found or assessed pursuant to 35 U.S.C. § 284;

14 P. that Plaintiffs be granted their costs and attorneys' fees in this action; and

15 Q. that Plaintiffs be granted such other and further relief as is just and proper
16 under the circumstances.
17

18
19 Respectfully submitted the 29th day of December, 2009.

20 GOLDSTEIN, FAUCETT & PREBEG, LLP
21 GUST ROSENFELD P.L.C.

22
23 By /s/ James G. Speer - 003103
24 Edward W. Goldstein
25 Holly H. Barnes
26 James G. Speer
Attorneys for Plaintiffs

STD

**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:09-cv-02699-SRB**

Freda, Inc., et al v. PremierGarage Systems, LLC, et al
Assigned to: Judge Susan R Bolton
Cause: 35:271 Patent Infringement

Date Filed: 12/29/2009
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

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Plaintiff

Richard Asher
doing business as
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Holly H Barnes
(See above for address)
ATTORNEY TO BE NOTICED

James G Speer
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Plaintiff

Indmar Coatings Corp.

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James G Speer
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Plaintiff

HP Spartacote, LLC

represented by **Edward W Goldstein**
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ATTORNEY TO BE NOTICED

Holly H Barnes
 (See above for address)
ATTORNEY TO BE NOTICED

James G Speer
 (See above for address)
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V.

Defendant

PremierGarage Systems, LLC

Defendant

Schorr Technologies, LLC

Defendant

In & Out Garage Floors, LLC

| Date Filed | # | Docket Text |
|------------|----------|---|
| 12/29/2009 | <u>1</u> | COMPLAINT. Filing fee received: \$ 350.00, receipt number 0970-3477273, filed by Freda, Inc.. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Civil Cover Sheet, # <u>4</u> Summons, # <u>5</u> Summons, # <u>6</u> Summons)(Speer, James) (Entered: 12/29/2009) |
| 12/29/2009 | <u>2</u> | Corporate Disclosure Statement by Freda, Inc.. (Speer, James) (Entered: 12/29/2009) |